



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 4, 2015

Ms. Marcia L. Schreiber  
Assistant to the City Attorney  
City of Galveston  
P.O. Box 779  
Galveston, Texas 77553-0779

OR2015-16056

Dear Ms. Schreiber:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 574268 (Galveston PIR# W001362-051515).

The City of Galveston (the "city") received a request for all communications between named individuals for a specified date range. You state you have released some information. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, you have marked a portion of an e-mail string as not responsive because it did not consist of communications between the named individuals. Upon review, however, we find this information is located within an otherwise responsive e-mail sent between the named individuals and thus, is responsive to the request for information. Accordingly, we will address your argument under section 552.107 of the Government Code for this and the remaining information.

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Next, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. Gov't Code § 552.301(b). The city received the request for information on May 15, 2015. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. We note May 25, 2015 was a holiday; thus the city's ten-business-day deadline was June 1, 2015. Your ten-business-day brief, dated May 29, 2015, did not state the exceptions the city claims to withhold the submitted information, and the city did not raise section 552.107 of the Government Code until June 8, 2015, which is after the ten-business-day deadline had passed. Consequently, the city failed to meet the ten-business-day requirement as prescribed by section 552.301(b) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless the governmental body overcomes this presumption by demonstrating a compelling reason to withhold the information. *Id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Although you raise section 552.107 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision No. 676 at 6 (2002) (attorney-client privilege under section 552.107(1) may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, in failing to comply with section 552.301, the city has waived its argument under section 552.107, and may not withhold the information on that basis. As no other exceptions to disclosure have been raised, the submitted information must be released in its entirety.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Mili Gosar". The signature is fluid and cursive, with the first name "Mili" and last name "Gosar" clearly distinguishable.

Mili Gosar  
Assistant Attorney General  
Open Records Division

MG/akg

Ref: ID# 574268

Enc. Submitted documents

c: Requestor  
(w/o enclosures)